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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/523,887

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Brian Leslie Smalley

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08/19/2009

WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

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COLLINS, MICHAEL

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/523,887	Applicant(s) SMALLEY ET AL.	
	Examiner MICHAEL K. COLLINS	Art Unit 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6,9 and 60-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,9 and 60-69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/22/2009 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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4. Claims 1, 2, 4, 6, 9, and 60-69 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Hoy et al. (USP 5,878,947).

Regarding claim 1, Hoy et al. disclose a paperboard carton for articles arranged in an end-on-end relationship, the carton comprising:

- six sides, the six sides including a first side disposed between a second side and a third side, the first side being perpendicular a fourth side, the second side, and the third side, the second side and the third side being parallel (see Figure 1),
- a two-piece dispenser that includes a first portion and a second portion (see Figure 2);
- the first portion defined at least partially along its perimeter by a first tear line;
- the first portion extending at least partially into the first side, the second side, and the third side (see Figure 4);
- the first portion being removable from the carton along the first tear line to create a first opening for article removal, the second portion being adjacent the first portion and being defined at least partially along its perimeter by the first tear line, a first provision, and a second provision (see Figures 1-4);
- the first provision having a first end proximate the first portion and a second end distal the first portion, the second end of the first provision being intersected by a first intersection line that prevents the first provision from extending beyond its intended length (see Figures 1 and 4);

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- the second provision having a first end proximate the first portion and a second end distal the first portion, the second end of the second provision being intersected by a second intersection line that prevents the second provision from extending beyond its intended length (see Figures 1 and 4);
- the second portion being separable along the first provision and the second provision to create a second opening in the carton (see Figure 2);
- wherein the second opening and the first opening together define an enlarged opening, the enlarged opening enabling easier article removal from the carton than the first opening alone (see Figure 2).

Regarding claim 2, Hoy et al. disclose the carton of claim 1. However, they do not disclose a carton wherein a divider pad is secured to the inside of the carton. Yet, adding this feature would have been obvious because the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

Regarding claim 4, Hoy et al. disclose the carton of claim 2. However, they do not disclose a carton wherein the divider pad has a fold down gluing panel. Yet, adding this feature would have been obvious because the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

Regarding claim 6, Hoy et al. disclose the carton of claim 1 wherein the first provision and the second provision are parallel (see Figure 4).

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Regarding claim 9, Hoy et al. disclose the carton of claim 1 wherein the six sides are arranged substantially rectangular (see Figures 1-4).

Regarding claim 60, Hoy et al. disclose the carton of claim 1 wherein the first tear line defines a perimeter section of the second portion in the first side (see Figures 1 and 4).

Regarding claim 61, Hoy et al. disclose the package of claim 64 wherein the first tear line defines a perimeter section of the second portion in the first side (see Figures 1 and 4).

Regarding claim 62, Hoy et al. disclose the carton of claim 1, wherein the first and second provisions are cuts.

Regarding claim 63, Hoy et al. disclose the carton of claim 1, wherein the first and second intersection lines are cuts.

Regarding claim 64, Hoy et al. disclose a package comprising:

- a plurality of articles (52);
- a paperboard carton (10) for enclosing the plurality of articles in rows, the carton comprising:
 - six sides, the six sides including a first side disposed between a second side and a third side, the first side being perpendicular a fourth side, the second side, and the third side, the second side and the third side being parallel (see Figures 1-4),
 - a two-piece dispenser that includes a first portion and a second portion (see Figures 1-2);

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- the first portion defined at least partially along its perimeter by a first tear line (see Figures 1 and 4);
- the first portion extending at least partially into the first side, the second side, and the third side (see Figures 1 and 4);
- the first portion being removable from the carton along the first tear line to create a first opening for article removal, the second portion being adjacent the first portion and being defined at least partially along its perimeter by the first tear line, a first provision, and a second provision (see Figures 1-3);
- the first provision having a first end proximate the first portion and a second end distal the first portion, the second end of the first provision being intersected by a first intersection line that prevents the first provision from extending beyond its intended length (see Figures 1 and 4);
- the second provision having a first end proximate the first portion and a second end distal the first portion, the second end of the second provision being intersected by a second intersection line that prevents the second provision from extending beyond its intended length (see Figures 1 and 4);
- the second portion being separable along the first provision and the second provision to create a second opening in the carton (see Figures 2-3);

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- wherein the second opening and the first opening together define an enlarged opening, the enlarged opening enabling easier article removal from the carton than the first opening (see Figures 2-3).

Regarding claim 65, Hoy et al. disclose the package of claim 63, wherein the first and second provisions are cuts (see Figures 1 and 4).

Regarding claim 66, Hoy et al. disclose the package of claim 63, wherein the first and second intersection lines are cuts (see Figures 1 and 4).

Regarding claim 67, Hoy et al. disclose a blank comprising:

- a first panel connected along a first fold line to a second panel (see Figures 1 and 4);
- the second panel connected along a second fold line to a third panel (see Figures 1 and 4);
- the third panel connected along a third fold line to a fourth panel (see Figures 1 and 4);
- at least a first end flap connected to either the first panel, the second panel, the third panel, or the fourth panel along a fourth fold line (see Figures 1 and 4);
- at least a second end flap connected to either the first panel, the second panel, the third panel, or the fourth panel along a fifth fold line; the fourth and the fifth fold lines being parallel, and the fourth and the fifth fold lines being perpendicular to the first fold line (see Figures 1 and 4);
- a first tear line in the third panel, the first tear line intersecting the second fold line at a first intersection point and intersecting the third fold line at a second

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intersection point; a second tear line in the third panel, the second tear line intersecting the second fold line at a third intersection point and intersecting the third fold line at a fourth intersection point; the first tear line and the second tear line being spaced apart a predetermined distance (see Figures 1 and 4);

- a third tear line in the second panel extending approximately from the first intersection point to the third intersection point (see Figures 1 and 4);
- a fourth tear line in the fourth panel extending approximately from the second intersection point to the fourth intersection point (see Figures 1 and 4);
- a first cut extending along the second fold line from the first intersection point to a first transverse cut (see Figures 1-4); and,
- a second cut extending along the third fold line from the second intersection point to a second transverse cut (see Figure 4).

Regarding claim 68, Hoy et al. disclose the blank of claim 67 wherein the first transverse cut and the second transverse cut are spaced a second predetermined distance from the fifth fold line (see Figures 1-4).

Regarding claim 69, Hoy et al. disclose the blank of claim 67 wherein the first transverse cut and the second transverse cut are parallel to the fifth fold line (see Figure 4).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL K. COLLINS whose telephone number is (571)272-8970. The examiner can normally be reached on 8:30 am - 5:00 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.K.C.
8/16/2009

/Gene Crawford/
Supervisory Patent Examiner, Art
Unit 3651